

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Restoring Internet Freedom

WC Docket No. 17-108

**BILL TOTH
COMMENTS ON THE MAY 23, 2017
NOTICE OF PROPOSED RULEMAKING**

On behalf of myself, I, John William (“Bill”) Toth submit this brief comment concerning the Federal Communications Commission’s Notice of Proposed Rulemaking, FCC WC Docket No. 17-108, entitled “Restoring Internet Freedom.” I believe the Commission correctly classified broadband Internet access service as well as the interconnection arrangements ancillary to the provision of that service as a “telecommunications” service under Title II. The Commission should not reverse course.

This comment addresses three issues raised by the NPRM for which I offer a consumer’s perspective. Many more issues in the NPRM, such as the methodological shortcomings in Hal Singer’s evaluation of capital expenditures after the 2015 Open Internet Order (including the failure to consider edge investment), the complete disregard for the effect on the virtuous cycle, the complete failure to consider the Internet’s role as a platform for free speech, the Commission’s failure to address the falsified submissions on this docket (by both proponents and opponents), and the fallacy of the slippery slope to rate regulation. I trust other commenters will address those issues better than I can. The three issues I address are (1) my understanding of the service I purchase from my BIAS provider, (2) the harm from zero rating that I experienced which reflects the harm that will occur if paid prioritization is allowed, and (3) the lack of competition and the prohibitive switching costs I have experienced that will prevent me from avoiding that harm.

I. BIAS PROVIDERS’ OFFERINGS

When I purchase broadband Internet access service, I understand the service I’ve purchased as routing requests from my computer (delivered to the provider via my router and modem) to a point I’ve specified (usually by URL), without changing my request, and then transmitting the response from the requested server back to me. I understand that when I specify

a point as a URL, my BIAS provider translates that to an IP address via the domain-name system. But I do not think of DNS as a separate service. Rather, it is simply the BIAS provider translating the point I've specified as the destination for my transmission into a usable format for the BIAS provider to use the same way a telephone company translates a telephone number into instructions for routing a call even when I don't know where the receiver of a call is.

The information I seek when I visit a website comes from the website's server. It is simply transmitted point-to-point by my BIAS provider. Thus, the "offering" made by BIAS providers plainly constitutes a telecommunications service. The Commission should not ignore the obvious in returning to the old, outdated, classification.

Moreover, I am baffled to learn that BIAS providers still offer other services to consumers, such as e-mail, cloud services, or web hosting. Those services are virtually useless if they lack permanence, and each time a consumer moves to a new city, they'd lose access to those services, which services could easily be purchased from an edge provider. Furthermore, I am simply disinterested in the limited functionality that BIAS providers offer with those side services as compared to the innovative offerings at the edge.

II. ZERO RATING AND PAID PRIORITIZATION

In 2014, T-Mobile (my mobile carrier at the time), began implementing its "Music Freedom" program, which allowed users of music-streaming companies that met certain technical limitations and otherwise won approval from T-Mobile to receive the data necessary to run those servers without effect on the user's data cap for a given month. At first, this offering seemed attractive. My Spotify usage out of the house would not cost me extra money! But then I realized T-Mobile's zero rating offering pushed me to listen to streaming music on Spotify when I would have preferred to listen to a streaming podcast on PocketCast. This was because

Music Freedom applied only to *music*, not to podcasts. In other words, it became T-Mobile's choice, not mine, what I listened to on my commute. That runs plainly contrary to the principles of openness that have driven the Internet ecosystem from the beginning.

The purpose of this anecdote is not to advocate for a bright-line rule prohibiting zero rating (though I'd support that rule, especially when it is not an open opportunity or when it disadvantages competitors). Rather, this demonstrates to the Commission that the prohibition on throttling and paid prioritization is not merely hypothetical. Rather, when BIAS providers have been permitted to discriminate against sources of traffic, albeit via different means, consumers and innovative edge providers have suffered the consequences. The Commission should not permit BIAS providers yet another opportunity for gatekeeping.

III. LACK OF COMPETITION AND SWITCHING COSTS

The problems with rolling back the 2015 Open Internet Order are especially sharp in light of the lack of competition in broadband. In each of the cities I've lived in since becoming an adult, I've had only one choice for wireline broadband. Only in San Francisco was there even a possibility of competition, with the emergence of MonkeyBrain. But (as with many in my generation), I rented my home, and so any installation by MonkeyBrain required the permission and coordination of my landlord – a herculean task. Moreover, I would face significant cancellation fees from my initial provider (not to mention poor customer service and difficulty in returning equipment, as I have each time I've terminated service).

With this lack of competition, consumers like me will be powerless to respond to a BIAS provider's decision to design its tiers of service in an unworkable manner, such as by bundling services that paid for prioritization.

IV. CONCLUSION

The Commission should not pull back from its efforts to preserve the open Internet at this critical moment when BIAS providers are poised to undermine it. Now, more than ever, we need staunch protection of the greatest communication platform in human history. The Commission should reject the instant NPRM.